

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

FILED

MAR - 1 2007

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY                      DEPUTY CLERK

LAUREN BROWNING,

Plaintiff,

VS.

SOUTHWEST RESEARCH INSTITUTE,

Defendant.

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CIVIL ACTION NO. SA-05-CA-0245-FB

**ORDER ACCEPTING MEMORANDUM AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE AND GRANTING  
OF MOTION FOR LEAVE TO FILE SUR-RESPONSE**

Before the Court is Defendant's Motion for Leave to File Sur-Response to Plaintiff's Reply to Defendant's Response to Plaintiff's Objections to Magistrate's Memorandum and Recommendation filed December 1, 2006. Defendant seeks leave to file its sur-response in order to fully and adequately develop and present to the Court the issues presented in the underlying pleadings. The Court finds the motion has merit and should be granted.

Accordingly, IT IS HEREBY ORDERED that Defendant's Motion for Leave to File Sur-Response to Plaintiff's Reply to Defendant's Response to Plaintiff's Objections to Magistrate's Memorandum and Recommendation (docket #110) is GRANTED such that the Court will consider the Defendant's Sur-Response to Plaintiff's Reply to Defendant's Response to Plaintiff's Objections to Magistrate's Memorandum and Recommendation attached to the motion for leave filed on December 1, 2006. However, in order for the Sur-Response to become an official part of the record, defendant shall have until **March 9, 2007, 2006**, to electronically file Defendant's Sur-Response to Plaintiff's Reply to Defendant's Response to Plaintiff's Objections to Magistrate's Memorandum and Recommendation which was attached to the motion for leave. See 4(c), *Administrative Policies and Procedures for Electronic Filing in Civil and Criminal Cases*, Western District of Texas, revised October 6, 2006 ("If the filing of a document requires leave of Court,

the Filing User must include for the Court's review the document as a PDF attachment to the motion requesting leave to file. **If the Court grants the motion, the Filing User must then file the document electronically.**”).

The Court has considered the Memorandum and Recommendation of the United States Magistrate Judge filed in the above styled and numbered cause on October 6, 2006, Plaintiff's Objections to the Memorandum and Recommendation of the United States Magistrate Judge filed October 23, 2006 (docket #102); Defendant's Response to Plaintiff's Objections to Magistrate's Memorandum and Recommendation filed November 9, 2006 (docket #106); Plaintiff's Reply to Defendant's Response to Plaintiff's Objections to Magistrate's Memorandum and Recommendation filed November 20, 2006 (docket #109); and Defendant's Sur-Response to Plaintiff's Reply to Defendant's Response to Plaintiff's Objections to Magistrate's Memorandum and Recommendation received on December 1, 2006.

Where no party has objected to a Magistrate Judge's Memorandum and Recommendation, the Court need not conduct a de novo review of them. See 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court need only review the Memorandum and Recommendation and determine whether they are either clearly erroneous or contrary to law. United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), cert. denied, 492 U.S. 918 (1989).

On the other hand, any Memorandum or Recommendation to which there are objections requires de novo review by the Court. Such a review means that the Court will examine the entire record, and will make an independent assessment of the law. The Court need not, however, conduct a de novo review when the objections are frivolous, conclusive, or general in nature. Battle v. United States Parole Commission, 834 F.2d 419, 421 (5th Cir. 1987).

The Court has reviewed the objections to the Memorandum and Recommendation and has conducted a de novo review of the Magistrate Judge's Memorandum and Recommendation with respect to those matters properly raised by the objections. See Memorandum and Recommendation at page 29 ("A party filing objections must specifically identify those findings, conclusions or recommendations to which objections are being made and the basis for such objection; the district court need not consider frivolous, conclusive or general objections."). The Court finds the objections to the Magistrate Judge's Recommendation are without merit. This Court hereby accepts, approves, and adopts the Magistrate Judge's factual findings and legal conclusions contained in the Memorandum and Recommendation and incorporates herein the arguments and authorities presented by the defendant in its response (docket #106) and its sur-response.

Therefore, the Memorandum and Recommendation shall be accepted pursuant to 28 U.S.C. § 636(b)(1) such that Defendant Southwest Research Institute's Motion for Summary Judgment (docket #72) should be GRANTED.

Accordingly, it is hereby ORDERED that the Recommendation of the United States Magistrate Judge, filed in this case on October 6, 2006 (docket #97), is ACCEPTED such that Defendant Southwest Research Institute's Motion for Summary Judgment (docket #72) is GRANTED and the case is DISMISSED WITH PREJUDICE. Motions pending, if any, are also DISMISSED.

It is so ORDERED.

SIGNED this 1<sup>st</sup> day of March, 2007.

  
FRED BIERY  
UNITED STATES DISTRICT JUDGE